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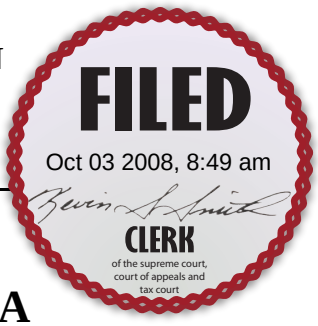

IN THE COURT OF APPEALS OF INDIANA

A.T.D.-H.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-0804-JV-186
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Harold E. Brueseke, Magistrate
Cause No. 71J01-0801-JD-3

October 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

A.T.D.-H. appeals from his adjudication as a delinquent child for committing arson,[1] which would be a Class B felony if committed by an adult. He raises the following restated issue: whether the evidence presented was sufficient to sustain his adjudication because he alleges that the witness's testimony was incredibly dubious.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the night of December 31, 2007, A.T.D.-H. and his brother, Kyle Pennell, were walking around together in Mishawaka, Indiana. The two separated for a few hours and met back together at the home of their mother where Pennell was watching television. When A.T.D.-H. arrived, he began talking with Pennell and told him that he "did something." *Tr*. at 24. Pennell did not respond to this statement, and the two then walked to the home of Pennell's girlfriend. On the way there, the two saw a bright glow in the sky, and A.T.D.-H. told Pennell that he had "made a mistake" and "messed up bad." *Id*. at 25, 27. A.T.D.-H. further told Pennell that he had done "something that he regretted." *Id*. at 28. He then explained to Pennell that he had started a fire in his old apartment by lighting a box on fire and placing the box on the counter.

The fire department was called to a fire at an apartment building located on Sixth Street in Mishawaka during the early morning hours of December 31, 2007. A.T.D.-H. had previously lived in one of the apartments in the building with his mother before they were evicted in December 2007. Fire Marshall Jeff Holland inspected A.T.D.-H.'s former apartment, which was involved in the fire. In his inspection, he concluded that the fire had a

[1] *See* IC 35-43-1-1(a).

human cause and that the origin of the fire was near the kitchen sink. Holland also noted that there were other areas in the apartment that indicated attempts to ignite the walls.

The State filed a delinquency petition alleging that A.T.D.-H. committed arson, which would be a Class B felony if committed by an adult. A fact-finding hearing was held, and on February 8, 2008, the juvenile court found A.T.D.-H. to be delinquent for committing arson. After a dispositional hearing, A.T.D.-H. was ordered to be placed in the Department of Correction. He now appeals.

DISCUSSION AND DECISION

Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor judge the credibility of witnesses. *C.D.H. v. State*, 860 N.E.2d 608, 610 (Ind. Ct. App. 2007), *trans. denied*. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. *Id*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *K.D. v. State*, 754 N.E.2d 36, 38-39 (Ind. Ct. App. 2001). We will affirm if there exists substantive evidence of probative value to establish every material element of the offense. *C.D.H.*, 860 N.E.2d at 610.

A.T.D.-H. argues that insufficient evidence was presented to support his adjudication for arson, which would be a Class B felony if committed by an adult. He specifically contends that Pennell's testimony was incredibly dubious because it was wholly uncorroborated and unreliable. He alleges this is because Pennell's testimony implicated a different person in the arson.

Under the incredible dubiosity rule, a court may "'impinge on the jury's responsibility

to judge the credibility of the witness only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity.'" *Weis v. State*, 825 N.E.2d 896, 905 (Ind. Ct. App. 2005) (quoting *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002)). The application of this rule is rare and is limited to cases where the testimony of a sole witness is so incredibly dubious or inherently improbable that it runs counter to human experience and no reasonable person could believe it. *Herron v. State*, 808 N.E.2d 172, 176 (Ind. Ct. App. 2004), *trans. denied*; *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*.

To support a true finding for arson, the State was required to prove that A.T.D.-H., by means of fire, explosive, or destructive device, knowingly or intentionally damaged property of another without the other person's consent if the pecuniary loss was at least $5,000. IC 35-43-1-1(a). At the fact-finding hearing, Pennell testified that, on the night the fire occurred, A.T.D.-H. told him that he had set a fire in his old apartment by lighting a box on fire and placing the box on top of the kitchen sink. Although Pennell did not witness A.T.D.-H. do this and was the only witness who testified regarding such evidence, other presented evidence corroborated Pennell's testimony. After inspecting the scene of the fire, Fire Marshall Holland concluded that the origin of the fire was near the kitchen sink and that the fire had a human cause. Other testimony also established that A.T.D.-H. had previously lived in the apartment where the fire occurred and his family had recently been evicted. Therefore, Pennell's testimony was not wholly uncorroborated and was not so incredibly dubious or inherently improbable that no reasonable person could believe it. Additionally, although Pennell did testify that he had received calls from a neighbor that implicated someone else in

starting the fire, the trial court was not obligated to credit this testimony. Because we do not find the testimony to be incredibly dubious, we will not impinge on the trial court's responsibility to weigh the evidence or judge the credibility of the witnesses.

Affirmed.

VAIDIK, J., and CRONE, J., concur.